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SECOND COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE SEVENTEENTH MEETING

Held at the Parque Central, Caracas,
on Friday, 26 July 1974, at 3.25 p.m.

<u>Chairman:</u>	Mr. AGUILAR	Venezuela
<u>later:</u>	Mr. PISK	Czechoslovakia
<u>Rapporteur:</u>	Mr. NANDAN	Fiji

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CONSIDERATION OF SUBJECTS AND ISSUES AND RELATED ITEMS: CONTINENTAL SHELF (A/9021)
(continued)

Mr. MUKUNA KABONGO (Zaire) said that, over the years, the concept of the continental shelf had lost none of its economic importance. Consequently, it was only right to incorporate it in the new Convention. Under the 1958 Geneva Convention on the Continental Shelf, the concept was based on the criteria of morphology and depth. At the current stage, however, it was appropriate to review those criteria within the context of an over-all political solution. A 200-mile economic zone, if established, would in practice not differ in substance from the concept of the continental shelf. The rights of a coastal State over the exploration and exploitation of the resources within the relevant economic zone would necessarily cover the mineral resources of the continental shelf, which henceforth should be delimited in accordance with the criterion of distance and not that of exploitability. The continental margin beyond the 200-mile limit would fall within the jurisdiction of the proposed international authority, which would have more extensive powers over that area.

Mr. Pisk (Czechoslovakia), Vice-Chairman, took the Chair.

Mr. ROTKIRCH (Finland) said that the question of the future régime of the continental shelf was closely linked with the various new proposals to extend the jurisdiction of coastal States over the natural resources adjacent to their coast, and particularly with the principle of an economic zone. The concept of the continental shelf embodied in the 1958 Geneva Convention on the Continental Shelf was widely accepted and applied by States, including States not parties to the Convention. Accordingly, the function of the Conference was not to abolish the concept, but rather to seek agreement on an exact definition of the outer limit of the continental shelf.

The part of the continental shelf situated within the proposed 200-mile economic zone would in practice be absorbed into that zone and would no longer exist as a special régime. The proposals to extend the maximum breadth of the territorial sea to 200 miles would have the same effect. There might be States, however, especially coastal States in enclosed or semi-enclosed sea areas, which did not wish to establish economic zones as such over the whole area of their continental shelf, or States which wished to establish zones of a limited economic nature only, such as fishery zones, of which there

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(Mr. Rotkirch, Finland)

were already many examples. In such cases, his delegation understood that the current concept of the continental shelf would remain valid. That view was also reflected in some of the proposals submitted to the Sea-Bed Committee. If the concept were not to remain valid, difficult situations could arise in many areas of the world where the continental shelves of bordering States had been delimited through bilateral or multilateral agreements.

What should be avoided was the creation of a situation in which current agreements would have to be renegotiated just because the concept of the continental shelf ceased to exist within the area over which an economic zone was established.

Mr. HARRY (Australia) said that the drafting of articles on the continental shelf was clearly one of the more important tasks confronting the Conference. The working paper submitted jointly by the delegations of Australia and Norway (A/AC.138/SC.II/L.36), containing certain basic principles on an economic zone, including the continental shelf, and on delimitation, continued to constitute the formal position of his delegation, and that position should therefore be reflected in the statement of views to be prepared at the end of the discussion on the continental shelf.

He paid a tribute to the President of Mexico who, in his address in the forty-fifth plenary meeting, had set the tone for the discussion in the Committee by stating that rights exercised over the continental shelf, in accordance with the law in force, must not be adversely affected by any new provisions that might be adopted by the Conference; and that, in the view of Mexico, the coastal State should exercise sovereign rights over the continental shelf up to the external limit of the continental margin, or up to a distance of 200 miles from the coast. Australia held an almost identical position, the only difference being that it had not declared its sovereignty over the continental shelf, but exercised sovereign rights over the shelf for the purpose of exploration and exploitation of its natural resources.

The concept of the continental shelf had been widely supported in the Conference and the Committee must now define it clearly. The continental shelf could be defined, as the representative of Bangladesh had suggested at the previous meeting, in terms of the outer edge of the continental margin; that would be a completely clear definition. Other delegations, endorsing the view of the International Court of Justice, considered that it would be sufficient to refer to the natural prolongation of the land territory of the coastal State.

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(Mr. Harry, Australia)

The definition set forth in the 1958 Geneva Convention must be clarified in two respects. Firstly, there must be a precise outer limit, since no State was proposing that the coastal State should have rights to the centre of the abyssal plains - in other words, all States agreed that there was a common heritage beyond the limits of national jurisdiction. Secondly, it must be made clear that the sovereign rights of the coastal State over the natural resources of the sea-bed and subsoil extended throughout the natural prolongation of its submerged land mass.

In the view of Australia, the doctrine of the continental shelf had never been that the continent as a whole, as distinct from separate coastal States of the continent, had rights over the continental shelf, and he felt confident that the Conference would not wish to embody that concept in the new Convention. At the same time, Australia sympathized with the problems of the land-locked States, and was willing to assist in the solution of their problems.

Even if there was to be an economic zone, it was essential, for a number of reasons, to retain the concept of the continental shelf. Firstly, it was necessary to respect existing sovereign rights of coastal States over the resources of the natural prolongation of their land territories, as in the case of the resources of their territories above sea level. Secondly, the submerged land mass of certain States extended beyond 200 miles. In the case of some countries, including Australia, the extension was only a small area, in relation to the proposed economic zone. In other cases it was somewhat larger; in any event, however, there was no reason of equity why a coastal State should be deprived of an area over which it had existing rights, while the area under the jurisdiction of other States was being maintained or even extended.

Thirdly, the Convention should define not only the area of the continental shelf but also the rights and duties pertaining to it. They were already well established, having been embodied in the 1958 Geneva Convention, and there was a large body of state practice with regard to rights for the exploration and exploitation of the natural resources of the continental shelf.

The unity of the continental shelf should be preserved, and should be reflected in the relevant draft articles. The rights and duties of the coastal State in relation to the superjacent waters would be dealt with in connexion with the proposed 200-mile economic zone; beyond 200 miles, the superjacent waters would, of course, be part of the high seas.

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(Mr. Harry, Australia)

Any diminution of the rights of the coastal State over the continental shelf would be inequitable to the significant number of States that possessed those rights and already exercised them. However, a diminution of those rights would also be inequitable to the many States which for various reasons had not yet been able to exercise those rights but which, in maturing awareness of the potential of their continental shelf, might see in such exercise the solution of many serious problems of development. It would be for those States to decide how they developed their continental shelves, whether individually, or in association with other States or even with the proposed international sea-bed authority.

What he had said in regard to the preservation of the inherent rights of the coastal State over its submerged resources would also apply in the drafting of articles relating to delimitation. At the current stage, he noted that it would be wrong to delimit the sea-bed between adjacent and opposite States in such a manner as to deprive States of rights which they, under bilateral agreements or otherwise, already exercised in good faith.

In proposing that the new Convention should respect existing rights, Australia was sympathetic to the position that, notwithstanding variations of geography, national jurisdiction over the coastal sea-bed area should be exercisable by all States to a reasonable limit based on distance. There should be no major difficulty in combining the two kinds of limit.

The results of a detailed survey of the outer areas of the Australian continental margin, which was now complete, indicated that it was entirely feasible to plot the outer edge of that margin. There was no reason to suppose that there would be any greater difficulty in demarcating the margin of other States, although such mapping activity would of course be necessary on a fairly wide scale in order to demarcate clearly the limits of national jurisdiction of States throughout the world. Australia's experience might prove of interest and use to other members of the Conference at the relevant stage in its work.

Mr. OGISO (Japan) said he wished to concentrate on the two most important aspects of the item, namely, a precise definition of the outer limits of the continental shelf, and the question of delimiting the boundaries of the continental shelves between adjacent and opposite States.

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(Mr. Ogiso, Japan)

In its statement in the general debate in the plenary Conference, his delegation had drawn a distinction between the legal régime to be applied to the non-living resources of the sea-bed and the subsoil and that to be applied to the living resources.

In view of the well-known criticism of the definition of the continental shelf - or the "coastal sea-bed area", as it should be called - in the 1958 Geneva Convention on the Continental Shelf, a more precise definition was called for. Of the various criteria proposed for that purpose, his delegation took the view that the criterion of distance seemed to be preferable, primarily because it was simple to apply. Given the complex nature of the geology and topography of the sea-bed areas of the world, any other criterion might create serious difficulties. In view of the important bearing that the question of limits had on the work of the other Committees, particularly the First Committee, and in order to avoid the possibility of perennial disputes between the proposed sea-bed authority and the coastal States arising from a vague definition, it was imperative to adopt one that was simple and clear.

More importantly, the criterion of distance would ensure a more equitable solution than would other criteria based on depth, geomorphology or topography, as certain delegations had already pointed out. In the interests of the international community as a whole, it would be wrong to perpetuate the inequity of nature that would entitle some States to coastal sea-bed areas extending only a few miles from the coast while entitling others to such areas extending for several hundred miles.

In addition, the extent of the coastal sea-bed area was related to the concept of the common heritage of mankind. The greater the sea-bed area falling under national jurisdiction, the smaller would be the area to be administered internationally for the benefit, in particular, of the developing countries. If a substantial part of the resources of that area were to be made available to the international community, there must clearly be a limit to what the coastal State could claim over the adjacent sea-bed area.

His delegation therefore believed that the limits of the continental shelf or the coastal sea-bed area in which the coastal State exercised sovereign rights for the purpose of exploration and exploitation of non-living resources should be clearly defined in accordance with the criterion of distance. The coastal State should be able to choose that distance freely within a limit not exceeding 200 nautical miles.

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(Mr. Ogiso, Japan)

He opposed the proposal that coastal States could claim sovereign rights over resources beyond 200 nautical miles up to the end of the whole continental margin, because that would reserve a disproportionate amount of the resources for the coastal States and reduce the revenue of the international sea-bed authority to the detriment of the developing countries.

With respect to the question of delimiting the boundaries of the continental shelf or the coastal sea-bed area between adjacent and opposite States, his delegation believed that the principle of equidistance should be generally adopted, except in certain special circumstances as it had been for defining the outer limits of the coastal sea-bed area. That viewpoint was amply justified by precedent. Moreover, islands and islets, regardless of their size and location, should in principle be entitled to the coastal sea-bed area on the same footing as the continental part of the territory.

His delegation believed that the coastal State should have the right to establish beyond its territorial sea - which in its view should be established at 12 nautical miles - a coastal sea-bed area up to a maximum distance of 200 nautical miles, in which it exercised sovereign rights for the purpose of exploring and exploiting non-living resources. The boundary between adjacent or opposite States should be determined by agreement in accordance with the principle of equidistance. That, however, should not prejudice the agreements already in force between the coastal States concerned relating to the delimitation of their respective coastal sea-bed areas.

Mr. ROE (Republic of Korea) said that his country firmly believed in the ipso facto and ab initio rights of coastal States over the submerged natural prolongation of their land territory known as the continental shelf. His delegation agreed with the President of Mexico that any infringement of the sovereign rights that a country had been legitimately exercising over the resources of its adjacent continental shelf was unacceptable.

With respect to the outer limit of the continental shelf, his delegation recognized the need to revise the exploitability criterion incorporated in the 1958 Geneva Convention on the Continental Shelf. It believed that the 200-mile distance criterion should apply in the first place and, when the natural prolongation of the continental shelf extended beyond 200 miles, the continental margin should be the limit of national jurisdiction.

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(Mr. Roe, Republic of Korea)

In enclosed and semi-enclosed areas, such as the one surrounding the Korean peninsula, the claims of adjacent and opposite States were bound to overlap. In such cases, delimitation of the boundary would give rise to many problems. His delegation shared the view that differences should be settled by agreement between the parties concerned. In the absence of any specific agreement or of any special circumstances, the principle of the median line of equidistance should apply.

If the parties concerned could not arrive at a mutually satisfactory agreement, or if one party had difficulty in accepting the claim of the other in the area where jurisdiction or claims overlapped, joint development schemes should be taken into consideration, as had been suggested by the International Court of Justice in its 1969 decision on the North Sea continental shelf case.

Mr. LACLETA (Spain) said that, with respect to the relationship between the continental shelf and the economic zone, three major trends were evident. The first, represented by the Nigerian draft articles (A/CONF.32/C.2/L.21), and reflected in the Declaration of the Organisation of African Unity on the Issues of the Law of the Sea (A/CONF.32/33), was to set up a single régime for the resources of the area. In that case, the idea of the continental shelf would lose its *raison d'être* and become absorbed into the wider concept of economic zone. Nevertheless, that solution left open the question of an acceptable solution for States with shelves extending beyond 200 miles.

The second trend, represented by the Nicaraguan draft articles (A/CONF.32/C.2/L.17) and the proposal of Colombia, Mexico and Venezuela (A/AC.138/SC.II/L.21) was to come to grips with the problem and to maintain that the economic or national zone was complemented by the traditional idea of continental shelf. Within the national zone, there would be a single régime for both renewable and non-renewable resources. The continental shelf would no longer be operative within the economic zone, and outside that zone it would come within a residual category. That would cover the rights of States with an extensive shelf.

The third trend which had been clearly explained by the Argentine delegation at the Preparatory Committee, was to hold that the economic zone and the continental shelf were complementary, not mutually exclusive. The economic zone would be governed by the régime applicable to the water column and living resources, while the rights of the

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(sir. Lacleta, Spain)

coastal States over the resources of the sea-bed and the ocean floor would have a different régime, that of the continental shelf.

The last two proposals would both involve maintenance of the rights already acquired by countries with a geomorphic shelf extending beyond 200 miles.

His delegation believed that two essential criteria had to be taken into account in an equitable solution of the problem. The first criterion was the 200-mile limit, as put forward by his delegation in document A/CONF.62/C.2/L.6. But that alone would not adequately protect the legitimate interests of coastal States with a continental shelf extending beyond 200 miles. His delegation therefore considered that the lower outer edge of the continental rise should be taken into account as well.

The problem must not be solved by sacrificing the interests of any group of States. If it were, those States might well refuse to accept the new law of the sea.

Mr. FATAHAL (Lebanon) recalled a statement that he had made to the First Conference on the Law of the Sea in 1958, to the effect that if the criterion of exploitability were accepted it might mean that four fifths of the high seas would eventually become the exclusive preserve of technically advanced coastal States, instead of being open to the whole international community as res communis. At the time, he had doubtless been considered either as backward or as a visionary. Today if the idea of the economic zone were adopted, the concept of the continental shelf would become meaningless, except beyond the 200-mile limit - in which only three or four privileged States could exercise sovereign rights - either because the 200-metre isobath criterion or the exploitability criterion, or both, were maintained. However, the exploitability criterion conflicted with the rights to be granted to the proposed international sea-bed authority. Technically advanced States would be able to exploit areas at a depth which ought normally to be exploited by that authority, and would thus be competing with it. It was absolutely essential to abolish the criterion of exploitability so as to leave at least part of the sea-bed to the international authority.

The criterion of the 200-metre isobath might eventually be kept. But if it were to be extended to the 4,000-metre isobath, as certain favoured States seemed to wish, there would remain nothing for the international authority to exploit except abyssal depths. There would then be little point in establishing an authority. The sea-bed prizes would go to technologically or geographically favoured nations.

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(Mr. Fattal, Lebanon)

If the ideas of exploitability and depth were eliminated, there remained only the criterion of distance, which led back to the idea of the economic zone. The concept of the continental shelf should be replaced by that of the economic zone. To retain the shelf concept would be unfair and undemocratic. It might well be argued that these were acquired rights: but such rights had impeded the progressive development of international law. If a mistake had been made in 1958, there was no need to perpetuate it.

The meeting rose at 4.20 p.m.